IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.70 OF 2006

Tata Memorial Centre & anr. ..Petitioners.
Vs.
Dr. Ramesh Wagh & anr. ..Respondents.

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Mr. S.K. Talsania, Senior Advocate with Mr. S.V. Uttam i/b Mulla & Mulla & CB & C for the Petitioners.
Mr. S.S. Pakale and Mr. A.U. Kshirasagar for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

18th January, 2007.

P.C.:

1. The Petition challenges an order passed by the Industrial Court allowing an application for the condonation of delay of nearly three and a half years in filing a complaint of unfair labour practices to challenge an order of suspension. On behalf of the Petitioners it has been submitted that the complaint has now been rendered infructuous in view of subsequent developments and that it would not be necessary for the Court as a result to enquire into the merits of the present proceedings. The First Respondent was suspended on 3rd September, 2001 on the ground that a criminal offence was under investigation. The complaint of unfair labour practices was

instituted on 29th March, 2004. The relief that was sought was a declaration that the order of suspension was illegal and unjustified. The complaint was under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. As noted above, the Industrial Court by an order dated 28th September, 2005 condoned the delay of nearly three and a half years in filing the complaint. Subsequently the First Respondent has been dismissed from service on 3rd October, 2005 after disciplinary proceedings. The Court has been informed that a substantive complaint has been instituted to challenge the order of dismissal. In that view of the matter, the complaint which forms the subject matter of the present proceedings (Complaint (ULP) 27 of 2004) is rendered infructuous. However, it is necessary to clarify that it would be open to the First Respondent to raise all such challenges to the order of dismissal as are open in law including on the grounds that were raised in the complaint that forms the subject matter of the present proceedings. This would include the ground of short payment, if any, in the payment of the subsistence

allowance. In the circumstances, Complaint (ULP) 27 of 2004

shall stand disposed of as infructuous.

2. All the rights and contentions of the parties in the pending complaint in respect of the order of dismissal are kept open. The Petition is accordingly disposed of.

A copy of this order shall formally be placed on the record of the Labour Court by the learned advocates for the parties.